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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,759	08/25/2003	Kevin J. Brodbeck	ARC 2882 N1 (3139-6225.1U)	3721
24247 TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110	7550 06/06/2008		EXAMINER BARNHART, LORA ELIZABETH	
			ART UNIT 1651	PAPER NUMBER
			NOTIFICATION DATE 06/06/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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***Continuation Sheet for Advisory Action***

The proposed amendments will be entered because the only amendment is to correct a grammatical error in claim 25.

*Continuation of Box 11.* The request for reconsideration has been fully considered, but it does NOT place the application in condition for allowance because it fails to overcome the rejections of record for the following reasons.

Applicant alleges that Brodbeck is not prior art because it was commonly owned at the time of the invention (Reply, page 8, paragraph 3). Rejections based on 35 U.S.C. § 102(e) (as is the obviousness rejection) can be overcome by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131. This rejection may not be overcome by the filing of a terminal disclaimer. See *In re Bartfeld*, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991). See M.P.E.P. § 706.02(b) for other ways in which such rejections can be overcome. A statement within the attorney arguments is insufficient to overcome the rejection.

Applicant alleges that Brodbeck does not teach compressed particles (Reply, page 8, last paragraph et seq.). Applicant is advocating a product-by-process interpretation of the term "compressed," which is inconsistent with the definition provided in the specification. At page 12, line 26, "compressed" is defined as a composition whose density is greater after compression or compaction than it was before compression or compaction. The spray drying of Brodbeck meets these criteria

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because the density of the spray-dried particles is greater than the density of the liquid preparation being sprayed. Applicant alleges that this interpretation is improper since the spraying does not necessarily result in compaction or compression (page 10, paragraph 1), but no evidence is set forth to support this allegation.

Applicant alludes to unexpected results connected with the claimed invention (page 9, paragraph 2), specifically that the instant invention promotes extended release of active agent, but there is no comparative evidence provided that indicates that the composition of the prior art would not possess these properties.

/Lora E Barnhart/  
Primary Examiner, Art Unit 1651